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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2025 / 8TH PHALGUNA, 1946

MACA NO. 1142 OF 2014

AGAINST THE AWARD DATED 26.06.2013 IN OPMV NO.1754 OF 2012 OF
MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

APPELLANTS:

- 1 ABDURAHIMAN
 S/O.MOOSA,
- 2 RASHEEDA
 AGED 44 YEARS
 W/O.ABDURAHIMAN,
- 3 RAJINA
 AGED 26 YEARS
 W/O.MUHAMMED SHEREEF,
- 4 SHABEER ALI
 AGED 22 YEARS
 S/O.ABDURAHIMAN, [ALL ARE RESIDING AT 148, (7/112B)
 ILLATH NOORAMTHODE POST, CHEMBUKADAVU KODANCHERY,
 KOZHIKODE)

BY ADVS.
SRI.V.S.CHANDRASEKHARAN
SRI.M.V.DAS
SMT.LEKSHMI SWAMINATHAN

RESPONDENTS:

- 1 SAJITHA.P
 W/O.KERALA KUMAR, RESIDING AT 2/569 OCEAN HOUSE, POST
 PERINGALAM, KUNNAMANGALAM, KOZHIKODE-673001.



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- 2 **SATHYAKUMAR**
AGED 47 YEARS
S/O.GOPALAN, RESIDING AT KUZHIMBATTIL HOUSE, POST
MINI KUNNAMANGALAM, KOZHIKODE-673001.

- 3 **ORIENTAL INSURANCE COMPANY LIMITED**
DIV.OFFICE, I SEEMA BUILDING, GH ROAD, OPP.
KOTTAPARAMBA HOSPITAL, KOZHIKODE-673001.

BY ADVS.
SRI.P.G.JAYASHANKAR
SRI.P.JACOB MATHEW- SC
SRI.MATHEWS JACOB SR.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 27.02.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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J U D G M E N T

Dated this the 27th day of February, 2025

The petitioners in O.P.(M.V.) No.1754/ 2012 on the file of the Motor Accident Claims Tribunal, Kozikode, are the appellants. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The O.P. was filed under under Sections 140 and 166 of the Motor Vehicles Act, 1988, by the parents and siblings of the deceased Shajir Abdurahiman, who died in a motor vehicle accident that occurred on 27.08.2012. According to them, on 27.08.2012, at about 5 p.m., while the deceased was riding a scooter through Mukkam-Agastyamuzhi road, he was hit down by a stage carriage bus driven by 2nd respondent in a rash and negligent manner and as a result of which he sustained serious injuries and later on he succumbed to the injuries, on the same day, while under treatment.

3. The 1st respondent is the owner , the 2nd respondent is the driver and 3rd respondent is the insurer of the offending vehicle. According to the petitioners, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. was



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Rs.5,54,000/-

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the documentary evidence Exts. A1 to A4. No evidence was adduced by the respondents.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.4,67,000/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners preferred this appeal.

8. Now the point that arises for consideration is the following:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri.V.S Chandrasekharan, the learned Counsel appearing for the petitioners/appellants, and Sri. P. Jacob Mathew, the learned Standing Counsel for the 3rd respondent.

10. The Point: In this case the accident as well as valid policy of the offending vehicle are admitted. One of the contentions raised by the



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learned counsel for the petitioners is regarding the income of the deceased as fixed by the Tribunal. According to him, the deceased was working as Mechanic, earning Rs. 12,000/- per month, but the Tribunal fixed his monthly income at Rs.4000/-.The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. As per the dictum laid down by the Hon'ble Supreme Court in the decision in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.** [2011 (13) SCC 236], the notional income of a coolie, during the year 2012 will come to Rs.8500/-. Since the petitioners could not prove the job or income of the deceased, as claimed in the OP, in the light of the dictum laid down by the Hon'ble Supreme Court in **Ramachandrappa** (supra), his notional income is liable to be fixed as that of a coolie, at Rs.8500/-.

12. On the date of accident, the deceased was aged 19 years. Therefore, 40% of the monthly income is liable to be added towards future prospects, as held in the decision in **National Insurance Co.Ltd v Pranay Sethi** [(2017) 16 SCC 680] and the multiplier to be applied is 18, as held in **Sarla Verma v. Delhi Transport Corporation**, (2009) 6 SCC 121. Since the deceased was a bachelor who left behind two dependents, towards personal



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and living expense, 1/2 of the income is liable to be deducted, as held in **Sarla Verma** (supra). In the above circumstances, the loss of dependency will come to Rs.12,85,200/-

13. The Tribunal has awarded Rs.8,000/- towards funeral expenses and Rs.20,000/- towards love and affection. The tribunal has not awarded any amount towards loss of estate and loss of consortium. In the light of the decision in **Pranay Sethi** (supra), the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, and the dependents (parents, children and spouse) are entitled to get a sum of Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years. Therefore, towards loss of estate and funeral expense they are entitled to get a sum of Rs.18,150/- each. Towards loss of consortium, petitioners 1& 2 together are entitled to get a sum of Rs.96,800/- (48,400 x2).

14. Since compensation for loss of consortium was given, further compensation for love and affection cannot be granted, in view of the decision in **New India Assurance Company Ltd. v. Somwati and Others**, (2020)9 SCC 644. Therefore, the compensation awarded towards love and affection is to be deducted.



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15. Towards the head 'pain and sufferings', the Tribunal has awarded Rs.5,000/-, which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case on the same day after the accident. In the above circumstances, I hold that the compensation awarded towards pain and suffering is on the lower side, and hence, it is enhanced to Rs.25,000/-

16. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

17. Therefore, the petitioners/appellants are entitled to get a total compensation of **Rs.14,45,300/-**, as modified and recalculated above and given in the table below, for easy reference:

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Transport to hospital	Rs.1000/-	Rs.1000/-
2	Damage to clothings and other articles	Rs.1000/-	Rs.1000/-
3	Funeral expenses	Rs.8,000/-	Rs.18150/-
4	Loss of love and affection	Rs.20,000/-	NIL
5	Pain and suffering	Rs.5,000/-	Rs.25,000/-
6	Loss of dependency	Rs.4,32,000/-	Rs.12,85,200/-
7	Loss of estate	NIL	Rs.18150/-



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8	Loss of consortium	NIL	Rs.96,800/-
	Total	Rs.4,67,000/-	Rs.14,45,300/-
	Enhanced	Rs.9,78,300/-	

18. In the result, this Appeal is allowed in part, and the 3rd respondent is directed to deposit a total sum of **Rs.14,45,300/-**, (Rupees Fourteen lakhs forty five thousand three hundred Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till realisation/deposit, with proportionate costs, within a period of two months from today.

On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners, in the ratio fixed by the Tribunal, excluding court fee payable, if any, without delay, as per rules.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

vnk/-